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IN THE UNITED STATES PATENT OFFICE

In re Application of
Hideaki Takahashi

App. No.: 10/707589
Filed: December 23, 2003
Conf. No.: 1588
Title: ROTARY ELECTRIC DEVICE
Examiner: Y. Comas
Art Unit: 2834
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence and all
marked attachments are being deposited with
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(571) 273-8300 and (571) 273-0125 on:

January 26, 2006


Ernest A. Beutler
Reg. No. 19901PETITION TO THE COMMISSIONER

Dear Sir:

Applicant respectfully petitions the Commissioner to exercise his supervisory authority and direct the Examiner to withdraw the finality of the Office Action, dated January 26, 2006, based on the newly cited reference Daikou 6,737,778. He claims that this new reference was necessitated by applicants amendment that allegedly raised a new issue, but cites no authority for this.

This alleged new issue amended claim 1 to include a feature clearly disclosed and thus does not raise a "new issue" as the MPEP Section 904.03 states "It is normally not enough that references be selected to meet only the terms of the claims alone, especially if only broad claims are presented; but the search should, insofar as possible, also cover all subject matter which the examiner reasonably anticipates might be incorporated into applicant's amendment."

Further more the position is particularly egregious inasmuch as the amendment made to claim 1 incorporated the subject matter previously claimed in claim 4 which was canceled. The Examiner's attention was clearly stated in the Remarks Section where it was stated "claim 1 has been amended to incorporate the features of original claim 4".

This is just another case where the Examiners lie in the weeds based on a cursory search and then cite new, more relevant art and then make the rejection Final so that applicants can not respond as a matter of right.

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Therefore it is respectfully submitted that the finality of the rejection must be reversed in fairness to the applicant.

Respectfully submitted:



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